

# EXHIBIT 2

Tonya Pointer

CAUSE NO. DC-17-06054

GORREPATI FAMILY VENTURE	§	IN THE DISTRICT COURT
LIMITED PARTNERSHIP	§	
	§	
VS.	§	_____ JUDICIAL DISTRICT
	§	
ZURICH NORTH AMERICA, ZURICH	§	
AMERICAN INSURANCE COMPANY		
AND NORTHERN INSURANCE	§	DALLAS COUNTY, TEXAS
COMPANY OF NEW YORK		

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the GORREPATI FAMILY VENTURE LIMITED PARTNERSHIP, insured of the Defendants, and (hereinafter referred to as "Plaintiff") complaining of Defendants ZURICH NORTH AMERICA, ZURICH AMERICAN INSURANCE COMPANY AND NORTHERN INSURANCE COMPANY OF NEW YORK (hereinafter referred to as "Defendants") and would hereby respectfully show unto the Court and Jury as follows:

**I. DISCOVERY LEVEL 2**

Plaintiff respectfully prays that discovery in this matter be conducted pursuant to Level 2 of Texas Rule of Civil Procedure 190.

**II. PARTIES**

Plaintiff, GORREPATI FAMILY VENTURE LIMITED PARTNERSHIP is a limited partnership operated in Dallas County, Texas.

Defendants, ZURICH NORTH AMERICA, ZURICH AMERICAN INSURANCE COMPANY AND NORTHERN INSURANCE COMPANY OF NEW YORK, are foreign insurance companies operating in the State of Texas procuring and adjusting policies in Texas.

ZURICH NORTH AMERICA, ZURICH AMERICAN INSURANCE COMPANY AND NORTHERN INSURANCE COMPANY OF NEW YORK can be served through their registered agent at the following address:

Corporation Service Company  
211 East 7<sup>th</sup> Street Suite 620  
Austin, TX 78701-3218

### **III. JURISDICTION AND VENUE**

This Court has Jurisdiction over this case in that the amount in controversy exceeds the minimum jurisdictional limits of this Court.

Venue is mandatory and proper in Dallas County, Texas because all or a substantial part of the events giving rise to the lawsuit occurred in this county (*see* Tex. Civ. Prac. & Rem. Code § 15.002) and the insured property that is the basis of this lawsuit is located in Dallas County, Texas.

### **IV. CONDITIONS PRECEDENT**

All conditions precedent to recovery have been performed, waived, or have occurred.

### **V. FACTS**

1. Plaintiff is the owner of insurance Policy No. PPS 42639238 issued by one or more of the Defendants (hereinafter referred to as the "Policy").
2. Plaintiff owns the insured property which is specifically located at 407 N. Cedar Ridge, Duncanville, Texas 75116 (hereinafter referred to as the "Property").
3. Defendants or its agents sold the Policy, insuring the Property, to Plaintiff.

4. On or about April 30, 2004, a hailstorm struck North Texas causing severe damage to homes and businesses throughout the area, including Plaintiff's Property.
5. The hailstorm was severe enough to damage Plaintiff's building, notably the roof.
6. Plaintiff submitted a claim to Defendants against the Policy for roof, other damage and resulting water damage the Property sustained as a result of the hail storm. Plaintiff asked that Defendant to cover the costs of repairs to the Property pursuant to the Policy.
7. Defendants ZURICH NORTH AMERICA, ZURICH AMERICAN INSURANCE COMPANY AND NORTHERN INSURANCE COMPANY OF NEW YORK have assigned Claim Number 5570137720 to Plaintiff's claim.
8. Defendants failed to properly adjust the claims and Defendants have denied a portion of the claims without an adequate investigation, even though the Policy provided coverage for losses such as those suffered by Plaintiff.
9. Plaintiff's claim was paid in part, in 2015 and 2016 yet still has not been fully paid.
10. Defendants failed to perform their contractual duty to adequately compensate Plaintiff under the terms of the Policy. Specifically, Defendants failed and refused to pay the full proceeds due under the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover the damaged Property and all conditions precedent to recovery upon the Policy had been carried out and accomplished by Plaintiff. Defendants' conduct constitutes a breach of the insurance contract between Defendant and Plaintiff.
11. Defendants misrepresented to Plaintiff that the damage to the Property was not covered under the Policy, even though the damage was caused by a covered occurrence. Defendants' conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE Section 541.060(a)(l).

12. Defendants failed to make an attempt to settle Plaintiff's claim in a fair manner, although they were aware of their liability to Plaintiff under the Policy. Defendants' conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE Section 541.060 (a)(2)(A).

13. Defendants refused to fully compensate Plaintiff, under the terms of the Policy, after Defendants failed to conduct a reasonable investigation. Specifically, Defendants performed an outcome-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair and inequitable evaluation of Plaintiff's losses to the Property. Defendants' conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE Section 541.060 (a)(7).

14. Defendant failed to meet its obligations under the Texas Insurance Code regarding timely acknowledging Plaintiff's claim, beginning an investigation of Plaintiff's claim and requesting all information reasonably necessary to investigate Plaintiff's claim within the statutorily mandated deadline. Defendant's conduct constitutes violation of the Texas Insurance Code, Prompt Payment of Claims, TEX. INS. CODE Section 542.055.

15. Defendant failed to accept or deny Plaintiff's full and entire claim within the statutory mandated deadline of receiving all necessary information. Defendant's conduct constitutes violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE Section 542.056.

16. Defendant failed to meet its obligations under the Texas Insurance Code regarding payment of claim without delay. Specifically, Defendant has delayed full payment of Plaintiff's claim longer than allowed and, to date; Plaintiff has not yet received full payment for their claim.

Defendant's conduct constitutes violation of the Texas Insurance Code, Prompt Payment of Claims, TEX. INS. CODE Section 542.058.

17. From and after the time Plaintiff's claim was presented to Defendants, the liability of Defendants to pay the full claim in accordance with the terms of the Policy was reasonably clear. However, Defendants have refused to pay Plaintiff in full, despite there being no basis on which a reasonable insurance company would have relied to deny the full payment. Defendants' conduct constitutes a breach of the common law duty of good faith and fair dealing.

18. As a result of Defendants' wrongful acts and omissions, Plaintiff was forced to retain the professional services of the attorney and law firm who is representing Plaintiff with respect to these causes of action.

19. Plaintiff experience is not an isolated case. The acts and omissions of Defendant committed in this case, or similar acts and omissions, occur with such frequency that they constitute a general business practice of Defendant with regard to handling these types of claims. Defendant's entire process is unfairly designed to reach favorable outcomes for the company at the expense of the policyholder.

## **VI. THEORIES OF LIABILITY**

### **A. Cause of Action for Breach of Contract**

Plaintiff re-alleges and incorporates by reference all previous and subsequent paragraphs herein.

According to the Insurance Policy that Plaintiff purchased, Defendants have the duty to investigate and pay Plaintiff policy benefits for claims made for covered damages, including additional benefits under the Policy, resulting from a hail storm.

Defendants' failure and refusal, as described above, to pay the adequate compensation as it is obligated to do under the terms of the Policy in question and under the laws of the State of Texas, constitutes a breach of Defendant's contract with Plaintiff. As a result of this breach of contract, Plaintiff has suffered the damages that are described in this petition.

**B. Cause of Action for Violation of Section 542**

Plaintiff re-alleges and incorporates by reference all previous and subsequent paragraphs herein.

Defendant's acts, omissions, failures and conduct that are described in this petition violate Section 542 of the Texas Insurance Code. Within the timeframe required after the receipt of either actual or written notice of Plaintiff's claim, Defendant did not request from Plaintiff any items, statements, information and forms that it reasonably believed at that time would be required from Plaintiff for their claim. Defendants now justify their inadequate payment as a result of not knowing the age of the roof, although they never requested that Plaintiff provide the age of the roof. As a result, Defendant has violated Section 542 by failing to accept or reject Plaintiff's claim in writing within the statutory timeframe and/or failing to provide a written explanation of additional information that Defendants needed. Defendants also violated Section 542 by failing to pay Plaintiff's claim within the applicable statutory period. In addition, in the event it is determined that Defendant owes Plaintiff any additional monies on Plaintiff's claim, then Defendant has automatically violated Section 542 in this case.

**C. DTPA Cause of**

Plaintiff re-alleges and incorporates by reference all previous and subsequent paragraphs herein.

Plaintiff incorporates all the allegations in this petition for this cause of action against Defendants under the provisions of the Texas Deceptive Trade Practices –Consumer Protection Act (“DTPA”). Plaintiff is a consumer of goods and services provided by Defendants pursuant to the DTPA. Plaintiff have met all conditions precedent to bringing this cause of action against Defendants. Specifically, Defendants’ violations of the DTPA include, without limitation, the following matters:

By its acts, omissions, failures, and conduct that are described in this petition, Defendants have violated Tex. Bus. Comm. Code, Sections 17.46 (b)(2), (5), (7), (9), (12) and (24) of the DTPA. In addition, to these violations, Defendants engaged in unconscionable conduct as that term is defined in the DTPA.

In this respect, Defendants’ violations include, without limitation, (1) unreasonable delays in the investigation, adjustment and resolution of Plaintiff’s claim, (2) failure to give Plaintiff the benefit of the doubt, and (3) failure to pay for the proper repair of Plaintiff’s business on which liability had become reasonably clear.

As described in this petition, Defendants represented to Plaintiff that the insurance policy and Defendants’ adjusting and investigative services had characteristics or benefits that they did not have, which gives Plaintiff the right to recover under Section 17.46 (b)(5) of the DTPA; As described in this petition, Defendants represented to Plaintiff that the insurance policy and Defendants’ adjusting and investigative services were of a particular standard, quality, or grade when they were of another in violation of Section 17.46 (b)(7) of the DTPA;

As described in this petition, Defendant advertised its insurance policy and adjusting and investigative services with intent not to sell them as advertised in violation of Section 17.46 (b)(9) of the DTPA;



- A. As described in this petition, Defendants represented to Plaintiff that its insurance policy and Defendants' adjusting and investigative services conferred or involved rights, remedies, or obligations that they did not have, which gives Plaintiff the right to recover under Section 17.46 (b)(12) of the DTPA;
- B. As described in this petition, Defendants failed to disclose information concerning goods or services which were known at the time of the transaction and such failure to disclose was intended to induce Plaintiff into a transaction into which the Plaintiff would not have entered had the information been disclosed, which gives Plaintiff the right to recover under Section 17.46 (b)(24) of the DTPA;
- C. Defendants have breached an express warranty that the damage caused by a hail storm would be covered under the insurance policy. This breach entitles Plaintiff to recover under Sections 17.46 (b)(12) and (19) and 17.50 (a)(2) of the DTPA;
- D. Defendants' actions, as described in this petition, are unconscionable in that they took advantage of Plaintiff's lack of knowledge, ability, and experience to a grossly unfair degree. Defendants' unconscionable conduct gives Plaintiff the right to relief under Section 17.50(a)(3) of the DTPA; and
- E. Defendants' conduct, acts, omissions, and failures, as described in this petition, are unfair practices in the business of insurance in violation of Section 17.50 (a)(4) of the DTPA.

All of the above-described acts, omissions, and failures of Defendants are a producing cause of Plaintiff's damages that are described in this petition. All of the above-described acts, omissions, and failures of Defendants were done knowingly and intentionally as those terms are

used in the Texas Deceptive Trade Practices Act.

**D. Cause of Action for Unfair Insurance Practices**

Plaintiff re-alleges and incorporates by reference all previous and subsequent paragraphs herein.

Plaintiff incorporates all the allegations in this petition for this cause of action against Defendants under the Texas Insurance Code. Plaintiff has satisfied all conditions precedent to bringing this cause of action. By its acts, omissions, failures, and conduct, Defendants have engaged in unfair and deceptive acts or practices in the business of insurance in violation of 541 of the Texas Insurance Code. Such violations include, without limitation, all the conduct described in this petition plus Defendants' unreasonable delays in the investigation, adjustment, and resolution of Plaintiff's claim and Defendant's failure to pay for the proper repair of Plaintiff's building on which liability had become reasonably clear. They further include Defendants' failure to give Plaintiff the benefit of the doubt. Specifically, Defendants are guilty of the following unfair insurance practices:

- A. Engaging in false, misleading, and deceptive acts or practices in the business of insurance in this case;
- B. Engaging in unfair claims settlement practices;
- C. Misrepresenting to Plaintiff pertinent facts or policy provisions relating to the coverage at issue;
- D. Not attempting in good faith to effectuate a prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear;
- E. Failing to affirm or deny coverage of Plaintiff's claim within a reasonable time;

- F. Refusing to pay Plaintiff's Claim without conducting a reasonable investigation with respect to the claim; and
- G. Failing to provide promptly to a policyholder a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for the denial of a claim or for the offer of a company's settlement, including the excess depreciation which Defendants used in calculating the settlement owed.

Defendants have also breached the Texas Insurance Code when they breached their duty of good faith and fair dealing. Defendants' conduct as described herein has resulted in Plaintiff's damages that are described in this petition.

All of the above-described acts, omissions, and failures of Defendants were done knowingly as that term is used in the Texas Insurance Code.

**E. Cause of Action for Breach of Duty of Good Faith and Fair Dealing**

Plaintiff re-alleges and incorporates by reference all previous and subsequent paragraphs herein.

Plaintiff incorporates all the allegations of the preceding paragraphs for this cause of action. By its acts, omissions, failures and conduct, Defendants have breached its common law duty of good faith and fair dealing by failing to pay the proper amounts on Plaintiff's entire claim without any reasonable basis and by failing to conduct a reasonable investigation to determine whether there was a reasonable basis for this denial. Defendants have also breached this duty by unreasonably delaying payment of Plaintiff's entire claim and by failing to settle Plaintiff's entire claim because Defendants knew or should have known that it was reasonably clear that the claim was covered.

These acts, omissions, failures, and conduct of Defendants are a proximate cause of

Plaintiff's damages.

**F. Cause of Action for Fraud**

Defendants are liable to Plaintiff for common law fraud. Each and every one of the representations, as described above, concerned material facts for the reason that absent such representations, Plaintiff would not have acted as they did, and which Defendants knew were false or made recklessly without any knowledge of their truth as a positive assertion. The statements were made with the intention that they should be acted upon by Plaintiff, who in turn acted in reliance upon the statements, thereby causing Plaintiff to suffer injury and constituting common law fraud.

**VII. WAIVER AND ESTOPPEL**

Defendant has waived and is estopped from asserting any coverage defenses, conditions, exclusions, or exceptions to coverage not contained in any reservation of rights letter to Plaintiff.

**VIII. DAMAGES**

The above described acts, omissions, failures and conduct of Defendants has caused Plaintiff's damages which include, without limitation, the cost to properly repair Plaintiff's roof and any investigative and engineering fees incurred in the claim. Plaintiff is also entitled to recover consequential damages from Defendant's breach of contract. Plaintiff is also entitled to recover the amount of their claim plus an 18% per annum penalty on that claim against Defendants as damages under Section 542 of the Texas Insurance Code, plus prejudgment interest and attorneys' fees. All the damages described in this petition are within the jurisdictional limits of the Court.

**IX. STATEMENT OF RELIEF AND DAMAGES OVER \$200,000**

The total damages sought by Plaintiff against Defendants for all elements of damage exceed the sum \$200,000, including exemplary and punitive damages, penalties, attorneys' fees, interests, and costs. Plaintiff will not seek or accept damages and/or award that may be rendered in the above-captioned matter in excess of \$1,000,000. As a result of Defendants' conduct that is described in this petition, Plaintiff plead out of the expedited actions process governed by Rules 47 and 169 under the Texas Rules of Civil Procedure. Plaintiff further pleads for judgment for all the other relief to which it deems justly entitled.

**X. ADDITIONAL DAMAGES**

Defendants have also "knowingly" and "intentionally" committed deceptive trade practices and unfair insurance practices as those terms are defined in the applicable statutes. Because of Defendants' knowing and intentional misconduct, Plaintiff is entitled to additional damages as authorized by Section 17.50(b)(1) of the DTPA. Plaintiff is further entitled to the additional damages that are authorized by Section 541 of the Texas Insurance Code.

**XI. EXEMPLARY DAMAGES**

Defendants' breach of its duty of good faith and fair dealing owed to Plaintiff was done intentionally, with a conscious indifference to the rights and welfare of Plaintiff and with "malice" as that term is defined in Chapter 41 of the Texas Civil Practice and Remedies Code. These violations by Defendants are the type of conduct which the State of Texas protects its citizen against by the imposition of exemplary damages. Therefore, Plaintiff seek the recovery of exemplary damages in an amount to be determined by the finder of fact that is sufficient to punish Defendants for their wrongful conduct and to set an example to deter Defendants and others similarly situated from committing similar acts in the future.

## **XII. ATTORNEYS' FEES**

As a result of Defendants' conduct that is described in this petition, Plaintiff have been forced to retain the undersigned attorneys to prosecute this action and have agreed to pay reasonable attorneys' fees. Plaintiff is entitled to recover these attorneys' fees under Chapter 38 of the Texas Civil Practices and Remedies Code, Sections 541 and 542 of the Texas Insurance Code, and Section 17.50 of the DTPA.

## **XIV. JURY DEMAND**

Plaintiff asserts Plaintiff's right to a trial by jury, under Texas Constitution Article I, Section 15, and make this demand for a jury trial at least 30 days before the date this case is set for trial, in accordance with Texas Rule of Civil Procedure 216. Plaintiff tenders the fee of \$30.00, as required by Texas Government Code Section 51.604.

## **XV. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that upon trial hereof, said Plaintiff have and recover such sums as would reasonably and justly compensate them in accordance with the rules of law and procedure, both as to actual damages, consequential damages, treble damages under the Texas Insurance Code and Texas Deceptive Trade Practices Act, and all punitive, additional, and exemplary damages as may be found. In addition, Plaintiff requests the award of attorney's fees for the trial and any appeal of this case, for all costs of court, for prejudgment and post judgment interest as allowed by law, and for any other and further relief, at law or in equity, to which they may show themselves to be justly entitled to receive.

Respectfully submitted,

**CARNAHAN THOMAS**

By: 

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**ATTORNEYS FOR PLAINTIFF**